

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND  
SUBSTANCE ABUSE SERVICES**

**Rules Committee Minutes**

**Clarion Hotel State Capital  
320 Hillsborough Street  
Raleigh, NC 27603**

**Wednesday, July 21, 2010**

Attending:

**Rules Committee Members:** Jerry Ratley, John R. Corne, Jennifer Brobst, Dr. Richard Brunstetter, Debra Dihoff, Cindy Ehlers, Matthew Harbin, Larry Pittman, Pamela Poteat, David Turpin

**Excused Absence:** Don Trobaugh

**Other Absences:** Dr. James Finch, Carl Higginbotham, Emily Moore

**Division Staff:** Steven E. Hairston, W. Denise Baker, Amanda J. Reeder, Andrea Borden, Martha Lamb

**Others:** Dr. John Carbone, Betty Gardner, Susan Pollitt, Sarah Tackett, Rodney Crooms, Caroline Ambrose, Dildra Jessup, Carolyn Watts, Rich Slipsky, Ann Ferrari, Ann Rodriguez, Annaliese Dolph, Stephanie Alexander

**Handouts:** NC General Statutes §122C-2, *Policy*, and §122C-3, *Definitions*

**Call to Order:**

Jerry Ratley, Chairman, called the meeting to order at 9:49 a.m. Mr. Ratley read the Ethics Reminder and asked if any members had a conflict of interest or appearance of conflict with respect to any matters coming before the Rules Committee. There were none.

**Approval of Minutes:**

*Upon motion, second, and unanimous vote, the Rules Committee approved the minutes of the May 27, 2010 Rules Committee Meeting.*

**Proposed Amendment/Adoption of North Carolina Department of Correction: Standards for Mental Health and Mental Retardation, Rules 10A NCAC 26D .1202 and .1203**

Pursuant to NC General Statute §148-19, the Commission for MH/DD/SAS has authority to promulgate rules for the delivery of mental health and mental retardation services to inmates in the custody of the Department of Correction ("DOC"). The statute requires that the Commission provide DOC the opportunity to review the proposed changes prior to promulgation thereof. The proposed amendments and adoptions were presented to the Rules Committee for initial review and approval to forward to the full Commission for review.

Betty Gardner, Quality Improvement Coordinator, NC Division of Prisons, presented the rules to the Committee, along with Dr. John Carbone, Commission member and Chief of Mental Health Services, NC Division of Prisons.

The following comments and recommendations were received regarding Rule 10A NCAC 26D .1202:

1. Matthew Harbin, Committee member, inquired about the use of the term “therapeutic” in the rules. Ms. Gardner stated that the term would be removed from both rules.
2. Jennifer Brobst, Committee member, suggested deletion of subsection (b)(3) in its entirety.
3. Pamela Poteat, Committee member, inquired if the committee referenced in subsection (j) is a standing committee; Ms. Gardner answered in the affirmative.
4. Ms. Brobst suggested removing the term “undesirable” in subsection (e)(4).
5. Debra Dihoff, Committee member, suggested amending the language in subsection (f)(4) to include a four hour interval limit for initial orders. Ms. Brobst suggested adding a two hour limitation for inmates less than 18 years of age.
6. The Committee members agreed to remove the term “physical” in subsection (g)(3) and the language “as shown” in subsection (g)(8).

Prior to the committee’s review of Rule 10A NCAC 26D .1203, Ms. Gardner informed the committee subsections (h)(5) & (7) of the rule needed to be reworded. Ms. Gardner informed the Committee that the rule should read that the inmate would be offered the services (fluids and toileting) upon request of the inmate.

The following were recommendations from the Rules Committee on Rule 10A NCAC 26D .1203:

1. Ms. Dihoff suggested removing the term “physical” in subsection (g)(3), to be consistent with Rule 10A NCAC 26D .1202.
2. Mr. Harbin recommended deleting “as shown” in subsection (g)(9), in order to be consistent with Rule 10A NCAC 26D .1202.
3. The Committee agreed to add the language proposed by Ms. Gardner in subsections (h)(5) and (h)(7) and decided to replace the term “see” with the term “assess” in subsection (h)(9).

***Upon motion, second, and unanimous vote, the Rules Committee approved the proposed amendments to Rules 10A NCAC 26D .1202 and .1203, as further amended, to be forwarded to the full Commission.***

#### **Proposed Amendment of Rule 10A NCAC 27I .0600 – Non-Medicaid Appeal Process**

W. Denise Baker, Team Leader, Division Affairs, NC DMH/DD/SAS, gave the presentation on the Proposed Amendment of Rule 10A NCAC 27I, Section .0600. The Commission has authority to adopt rules establishing a process for non-Medicaid eligible clients to appeal to the Division of MH/DD/SAS decisions made by a Local Management Entity affecting the client. The purpose of the appeal process is to ensure that mh/dd/sa services are delivered within available resources, to ensure appropriate application of and compliance with applicable statutes and rules, and to provide additional opportunities for the Local Management Entity to resolve the underlying complaint. During its May meeting, the Commission approved a waiver of Rule 10A NCAC 27I .0606 to permit a Hearing Officer to conduct the Non-Medicaid Appeal Hearing in lieu of the Panel required by rule. In approving the waiver, however, the Commission asked the Division to present proposed amendments to the rules in order to circumvent the need for continued waivers regarding the Non-Medicaid Appeal process. The rules were presented to the Rules Committee for approval to forward to the Commission for publication in the NC Register.

The Rules Committee made the following recommendations regarding Rules 10A NCAC 27I, Section .0600:

1. Rule 10A NCAC 27I .0606: Debra Dihoff, Rules Committee member, suggested changing the language in subsection (g) to read, “the hearing shall be convened in a location designated by the Division taking into consideration reasonable accommodations for the appealing party.”
2. Rule 10A NCAC 27I .0607: Ms. Dihoff suggested replacing the term “may” with “shall” in subsection (a)(2).
3. Rule 10A NCAC 27I .0609: Ms. Brobst suggested amending the rule to include that an annual written report from staff would be provided to the Commission regarding non-Medicaid appeals.

*Upon motion, second, and unanimous vote, the Rules Committee approved the proposed amendments to Rule 10A NCAC 27I Section .0600, as further amended, to be forwarded to the full Commission.*

**Proposed Amendment of Rule 10A NCAC 27G .7004 – Appeals to the Area Authority or County Program Regarding Utilization Review Decisions for Non-Medicaid Services**

Ms. Baker gave the presentation on the proposed amendment of Rule 10A NCAC 27G .7004. The Division proposed amending the rule, which sets forth requirements regarding non-Medicaid consumer appeals to the LME. Ms. Baker clarified that all consumers must complete the appeal process at their LME before they may file the appeal with the state. The proposed amendment was intended to clarify who may file the appeal at the LME level, as well as remove redundant phrasing. The Secretary has authority for the content of this rule; the proposed amendment was presented to the Rules Committee for information and comment.

The Rules Committee made the following comments regarding Rule 10A NCAC 27G .7004:

- Ms. Dihoff stated she was concerned about subsection (e), which requires the LME to acknowledge receipt of the appeal within the one business day. Ms. Dihoff stated it would be better if the request went to the LME, rather than the Director. Ms. Dihoff added that she had concerns regarding the absence of the LME Director (if he or she were on vacation, sick leave, etc.). Ms. Baker responded that could be true for anyone at the LME office, as Division could specify other people, but anyone who was specified could potentially be absent from the office. Ms. Baker noted that the one business day requirement was not new, as this language is currently in rule and the Division has not heard of any difficulties imposed by this requirement.
- Steven E. Hairston, Section Chief, Operations Support, NC DMH/DD/SAS, informed the Rules Committee that staff handled the non-Medicaid appeal rules differently from the other rules. Mr. Hairston stated that generally, a workgroup is established, which provides an opportunity for the public to submit comments and questions to that workgroup. Mr. Hairston stated that the Division received one set of comments from the NC Council and asked the Committee’s permission to allow a Council representative to relay their comments at that time. The Committee agreed to allow Ann Rodriguez to read her comments. Ms. Rodriguez stated that the Council’s main concern was with subsection (e). Ms. Rodriguez stated that LME Directors were concerned that if the Director was not in the office, they may not be able to respond in a timely fashion. Ms. Rodriguez added that Directors are very busy and can be out of the office quite often. In addition, the Directors may not have staff that open their mail for them, given

confidentiality concerns. The Council proposed to amend the language in (e) to state that the request shall go to a designated department within the LME and not necessarily the LME Director.

### **Public Comment**

Ann Ferrari, Attorney, NC Prisoner of Legal Services, thanked the Rules Committee for its hard work on the Prison rules and stated that they represented a dramatic improvement from the initial draft. Ms. Ferrari stated that her agency submitted a lengthy letter with recommendations and appreciated being given the opportunity to submit the letter to the committee. Ms. Ferrari referenced the standard of care at Cherry Hospital and UNC. Ms. Ferrari suggested further changes to Rule 10A NCAC 26D .1202 & .1203 and directed the Committee's attention to the letter containing their proposed amendments.

Annaliese Dolph, Disability Rights of North Carolina, stated that she had comments regarding the non-Medicaid Appeal rules and brief comments regarding the seclusion and restraint rules. Regarding the seclusion and restraint rules, Ms. Dolph stated that federal regulations address training issues, as they contain information regarding training and trainer requirements for staff who are involved in seclusion and restraints. Ms. Dolph recommended that the Commission insert a reference to the federal regulations in Rule 10A NCAC 26D .0508. Regarding Rules 10A NCAC 27I, Section .0600, Ms. Dolph stated that Disability Rights disagreed with removing the panel and using the Hearing Officer instead. Ms. Dolph further stated that Disability Rights felt that the panel was important to ensure transparency in the appeal process.

Dildra Jessup, Southeastern Regional LME, stated that she has participated in the non-Medicaid Appeal process both as a panel member and as an employee of the LME involved in the appeal. Mrs. Jessup stated that the rights of the individual consumers have always been protected, regardless of whether a panel or a Hearing Officer hears the matter. Ms. Jessup further stated that in her experience the Hearing Officer makes every effort to ensure that all the information has been made available to everyone involved in the hearing and has always been professional.

John Owen, Commission member clarified that Medicaid appeals are based upon medical necessity.

**There being no further business the meeting adjourned at 1:44 pm.**